IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4537 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1& 2 YES; 3 to 5 NO

MINAXIBEN HARSUKHLAL DAVE

Versus

CHAIRMAN & MANAGING DIRECTOR

Appearance:

1. Special Civil Application No. 4537 of 2001

MR BP TANNA for TANNA ASSOCIATES for Petitioner No. 1

MR AS VAKIL for Respondent No. 1-2

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 02/05/2002

C.A.V. JUDGEMENT

1. This petition by the widow of a clerk of the respondent-Bank seeks to retrospectively obtain the

benefits of family pension by converting from the provident fund scheme to the family pension scheme. For the sake of convenience, the deceased husband of the petitioner shall, hereinafter, be called "the petitioner".

2. The short and saddening facts of the case are that the petitioner, after serving the respondent-Bank for 27 years, suffered from parkinsons disease and had to voluntarily retire with the prospect of his dependent son being appointed on compassionate ground. He sought premature retirement, but was advised by the Bank to submit his resignation and, accordingly, he submitted the resignation on medical grounds so as to take its effect from the date of appointment of his son. He appears to have retired by such resignation with effect from 12.8.1988 before reaching the age of superannuation and his lamp of life was extinguished on 18.10.1988. The widow requested the Bank that as his resignation was, in effect, voluntary retirement, she was eligible for family pension scheme which was subsequently introduced with retrospective effect.

3. The petition was resisted on the ground of delay insofar as the orders dated 7.12.1996 and 8.8.1998 were sought to be challenged by this petition filed in June, 2001. On merits, it was contended that the State Bank of Saurashtra (Employees) Pension Regulations-1995, on which the claim of the petitioner is based, did not apply to the facts of the petitioner's case. According to the relevant part of the relevant Regulation 3 (7), the regulation shall apply, inter alia, to the employees who had retired on or before the 31st day of October, 1993 but died before the notified date, in which case, their family shall be entitled to pension or family pension, as the case may be, if the family of the deceased exercises an option in writing within 120 days from the notified date to become a member of the fund and refunds within 60 days of the expiry of the said period, the entire amount of the Bank's contribution to the provident fund and interest accrued thereon together with a further simple interest @ 6% per annum from the date of settlement of the provident fund account till the date of refund of the aforesaid amount to the Bank. The notified date is 23.3.1996. By virtue of the Regulation 22 (1), the events of disqualification are prescribed as under:

" 22 (1) Resignation or dismissal or removal or termination of an employee from the service of the Bank including that of an employee who is deemed to have voluntarily retired from

the Bank's service in terms of the provisions for voluntary cessation of employment contained in Bipartite Settlement shall entail forfeiture of his entire past service and consequently shall not qualify for pensionary benefits."

3.1 Relying upon the above regulations, the respondent submitted that the petitioner had admittedly resigned on 16.6.1988 and was accordingly disqualified.

4. The learned senior counsel Mr.Tanna fervently argued that, in the facts of the present case, the resignation, for all intent and purposes, was an application for voluntary retirement covered by Regulation 3 (7) and, therefore, should not disqualify the petitioner by operation of Regulation 22 (1). He emphasized that the Bank ought to have taken a sympathetic view towards its deceased employee who served it for 27 years, rather than taking a pedantic view to disqualify his heir from exercising the option to convert from the provident fund scheme to the pension scheme.

5. It must be noted that since the pension scheme was floated only in 1996, the petitioner could not have its provisions in mind while seeking premature retirement in April, 1988. Therefore, in his condition rendered pathetic by the parkinsons disease, he sought premature retirement with a request to appoint his son in the Bank's service on compassionate grounds. There was in force, at that time, a scheme whereunder the Bank could offer employment on compassionate grounds to son, daughter or near relative of an employee who died while in service. According to the memo dated 13.10.1983, a decision was taken to extend the benefit of appointments on compassionate grounds to the dependents of employees who were incapacitated by accident or serious ailments while in service and who were compelled to leave the Bank's service before their normal retirement age. Evidently, the benefit of these extended provisions for compassionate appointment could not have been availed by the petitioner if he had insisted on voluntary retirement under the provisions, if any, for the time being in force for voluntary retirement. Therefore, it was in his own interest that he could be presumed to have opted for terminating his service by resignation.

6. The aforesaid Regulations made to provide for establishment and maintenance of pension funds for the benefit of the employees prescribes and restricts the class of employees to whom it shall apply, particularly with retrospective effect. As seen earlier, it applies,

inter alia, to employees who had retired on or before 31.10.1993 and died before 23.3.1996, if they were in service of the Bank on or after 1.1.1986. The word "retired" occurring in that relevant Clause (7) of Regulation 3 is defined in Clause 2 (x) to include the persons deemed to have retired under Clause (l) of the same Regulation. The word "retirement" is also defined in Clause 2 (y) as under:

"retirement" means cessation from Bank's service,
(a) on attaining the age of superannuation specified in service Regulations or Settlements;

(b) on voluntary retirement in accordance with provisions contained in regulation 29 of these regulations;

(c) on premature retirement by the Bank before attaining the age of superannuation specified in service Regulations or settlement."

Clause (b) of Regulation 2 (y) as above indicates retirement to be cessation from Bank's service on voluntary retirement in accordance with the provisions contained in Regulation 29 of the Regulations. And, Regulation 29, which provides for pension on voluntary retirement, requires giving of notice of not less than three months after completion of 20 years of qualifying service and acceptance of the same by the appointing authority. Such notice could have been given only on or after 1.11.1993 according to Regulation 29. Therefore, it was impossible for the petitioner to seek voluntary retirement in accordance with such Regulation. A special provision is made in Regulation 34 for payment of pension or family pension in respect of employees who retired or died between 1.1.1986 to 31.10.1993. This Regulation 34 reads as under:

"34 (1) Employees who have retired from the service of the Bank between the 1st day of January, 1986 and the 31st day of October, 1993 shall be eligible for pension with effect from the 1st day of November, 1993.

(2) the family of a deceased employee governed by the provisions contained in sub-regulation (7) of regulation 3 shall be eligible for family pension with

effect from the 1st day of November, 1993.

7. The scheme of the above Regulations clearly indicates that it envisages benefits of pension or family pension, inter alia, for employees who have voluntarily retired either in accordance with the provisions of the scheme or, may be, otherwise before its coming into operation. But it clearly and consciously excluded the cases of resignation.

8. Now, for the petitioner or his heir, it is a claim for double benefit de hors the scheme and express provisions thereof by alleging the resignation to be voluntary retirement in reality and by evoking sympathy. However, that cannot be permitted by any process of filling up interstices or interpretation without violating the express provisions and scheme of the Scheme. The jurisdiction of this Court under Article 226 does not extend to stretching the legal provisions to such an extent that a whole class of employees expressly intended to be excluded, could be made beneficiaries of the scheme by going behind and examining the reasons or nature of their resignation. That would subvert the rule of law rather than subserve the cause of justice.

9. In the facts and for the reasons discussed hereinabove, the petition is rejected. Notice is discharged with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)